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Docket No.: 713-1029 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	**EXPEDITED PROCEDURE**
	:	**Response under 37 CFR 1.116**
Alain GAUTHIER	:	
	:	
U.S. Patent Application No. 10/764,571	:	Group Art Unit: 3677
	:	*Confirmation No. 9023*
Filed: January 27, 2004	:	Examiner: David C. Reese

For: SCREW ANCHOR FOR FRIABLE MATERIAL

PRE APPEAL BRIEF REQUEST FOR REVIEW TRANSMITTAL

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COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria VA 22313-1450

Sir:

This paper is submitted in reply to the Final Office Action mailed *July 14, 2006.*

Applicants respectfully request review of the final rejections of claims 1-23 as manifested in the Final Office Action. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal in compliance with *37 CFR 41.31* and the fee set forth in *37 CFR 41.20(b)(1).*

The review is requested for the reasons stated on the attached sheets.

Respectfully submitted,

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Review of the position taken by the Examiner in the final action dated is requested. It is submitted that the rejection of claims 1, 3-4, 6, 8-14 and 16-21 under 35 USC § 103(a) as being unpatentable over West et al. in view of Mulroy et al. is improper.

The drill bit of Mulroy et al., is intended to cut and clear its path as it forms a hole in a work piece. The self-drilling anchor bolt is, to the contrary, not intended to create a hole and not intended to clear material, but to screw its way in and essentially bury itself in the material without clearing its path and so that it is anchored in the material. A drill bit which anchors itself in this manner would obviously be inoperative for its intended purpose. That is to say, the drill bit is intended to cut material, remove the cut material and be readily pulled back out of the bore it had formed in work piece - the very antithesis of the anchor bolt mode of operation.

The Examiner failed to address the issue as to whether a self-tapping screw (anchor bolt) and a drill bit are analogous art. The drill bit is configured to make a clear hole - the self-tapping screw is configured to avoid forming such a clear hole or bore but to "worm" into the material in the least hole forming manner. If the self-tapping screw or anchor bolt forms a hole (as per a drill bit) it will come out easily and therefore defeat the very purpose of becoming anchored in the material.

Mulroy et al. is submitted to relate to art which is non-analogous with respect to that to

West et al. is directed. Conceptually, one relates to anchoring, the other relates to excavation. Thus, in connection with the field of endeavor, "anchoring" and "excavation" are seen as being diametrically different and the particular problem of improved anchoring vis-à-vis the improved cutting of a clear hole (drilling and excavating material) are not reasonably pertinent with respect to one another. The two references therefore fail to meet the requirements of analogous art and should not be used together in the same rejection.

More importantly, the rejection fails to take into consideration that West et al. discloses, in connection with the embodiment shown in Fig. 7B (which is that which is relied upon for rejection), the use of two cutting features 127 and a sharpened projection 125. This latter mentioned sharpened projection 125 and its guiding function cannot be ignored.

The Examiner has himself indicated on page 10 of the Final Office Action that the "test for combining references is what the combination of the disclosures taken as a whole would suggest to one of ordinary skill in the art - *In re McLaughlin* 170 USP 209 (CCPA 1971). The teachings of the sharpened projection 125 - which forms a clearly disclosed part of the disclosure of West et al. - therefore has not been taken into consideration when the disclosure of West et al. is taken as whole and has been ignored.

Column 5, lines 40-63 of West et al., as follows:

> The anchor bolt 100 extends from a first end 130 to a second end 132. Proximate to the first end 130 is the shank 110, and proximate the second end 132 is the drill portion 120. The drill portion 120 has, in one embodiment, a smaller diameter than the shank 110. The drill portion 120, in another embodiment, comprises a drill bit. The drill portion 120 extends from proximate the shank 110 to a drill tip 124. The drill tip 124, in one embodiment, is sharpened to a point 126. The point 126 of the drill tip 124 is sharpened to assist in the installation process. **In another embodiment, as illustrated in FIG. 1B, the drill tip 124 has a sharpened projection 125 in combination with extended cutting features 127 of the drill portion 120.** The sharpened projection, in one embodiment, is aligned with the radial axis 109 of the anchor bolt 100. The extended cutting features 127 extend from the drill portion to a point 129. The extended cutting features 127 allow for the anchor bolt

> 100 to self-tap into a wall, and eliminate the need for extra tools, such as a drill, when installing the anchor bolt. The **sharpened projection 125 assists in centering the anchor bolt 100 as the extended cutting features 127 engage with the wall.** In **addition**, the **sharpened projection 125 prevents the anchor bolt 100 from wandering** during installation of the anchor bolt 100 into the wall. (Emphasis added)

The rejection fails to establish how this clearly disclosed guiding/centering function can be ignored and not given any weight. The sharpened projection 125 and its intended centering/guiding use, could not be ignored by the hypothetical person of ordinary skill when contemplating a modification of West et al. via a transfer of teachings of Mulroy et al. and would influence the outcome of any such contemplation. This is deemed to be especially self-evident in light of the anchoring v excavation differences in concept which are demonstrated by the two references applied in this rejection when each is taken as a whole.

It is also clear that the projection 125 is not a central cutting element as per Mulroy et al. but is located exactly where the central cutting element of Mulroy would have to be placed to replace the projection 125, if, in accordance with the teachings of Mulroy, it were to be introduced into West et al. This would remove the guiding function it is intended to provide. Again the question is anchor or excavate? Cut and clear like a drill or dig in and anchor like a self tapping screw.

Indeed, inasmuch as all of the embodiments which feature the two cutting features 127 also have the projection 125, it is self-evident that the centering effect and guidance, which is disclosed as being provided by the projection 125, would be noted and duly considered by the hypothetical person of ordinary skill, to be of importance and would not be ignored for the sake of adding another cutting element - especially when diametrically operational concepts (anchor or excavate) are involved. The need to put a cutting element in the position where a guiding element is located is clearly necessary if the Examiner's position is to be tenable. However, as noted above, the loss of the projection 125 in favor of another drilling element will certainly remove an important guiding function and thus would render the West et al. arrangement at least partially inoperative for its intended anchoring function while more than likely changing the structure so

that it defeatingly removes (drills out) vital material needed for a solid anchoring effect.

A further problem resides in the position taken with respect to the motivation which is advanced. That is to say, the rejection alleges that the purportedly obvious combination would be made because the resulting configuration would "allow a more concrete engagement of a work piece" "thereby allowing a more efficient drilling event."

Apart from contradictorily relying on "better cutting" (excavation) leading to "better engagement" (anchoring), the presumption that a more efficient arrangement would result is mere unsupported supposition/conjecture and amounts to nothing more than a hollow conclusatory statement that is totally unsubstantiated. This must be particularly considered to be the case when the apparent need to replace the centering feature 125, if the claimed subject matter were to be rendered obvious via the combination of West et al. and Mulroy et al., is taken into consideration.

Yet another problem with the rejection is that the Examiner has had to add numerals to the figures of Mulroy et al. to indicate the surfaces which are being claimed and which have been assumed to be found in Mulroy et al. This suggests that it is necessary to add disclosure, based on a working knowledge of the claimed subject matter, to that which can normally be distilled from Mulroy et al. taken as a whole. This appears to be contrary to the requisite under § 103, that the reference, when taken by a hypothetical person of ordinary skill, would, without modifications/additions (including interpretations by an Examiner who is fully cognizant of the claimed subject matter), lead toward the claimed subject matter.

In the paragraph spanning pages 10 and 11 of this Office Action, the Examiner has indicated that it is "pertinent to point out that claims in a pending application should be given their broadest reasonable interpretation." This is all well and good for a rejection under § 102- but how does the hypothetical person of ordinary skill in the art become cognizant of the claim language and use this knowledge to guide the interpretation of the teachings which can be gleaned from the cited art under § 103? - noting that the rejection is under § 103 and not under § 102.

Further, it is questionable if the surface the Examiner has labeled (4) is in fact flat. That is

to say, the lead line which is associated with the Examiner's added numeral (4) would seem to designate one of the flutes. Flutes by their nature are helically curved and cannot, without very clear contradictory disclosure, be considered to be flat instead of constantly curving in at least two directions. It is therefore, advanced that the assumption that surface (4) is flat, cannot be distilled with any degree of confidence from any of the information that is available from Mulroy et al. (as it was published) and is indicative that the claims have been used as road map in this rejection.

In connection with the rejection of claims 2, 5 and 15 under 35 US § 103(a) as being unpatentable over West et al. in view of Mulroy et al. and further in view of Carlson et al., Carlson et al. disclose a stud which is adapted to be threaded into a plastic substrate/boss 17. Studs by there very nature has threads on both ends. Why the hypothetical person would bother with the teachings which relate to a specialized stud in connection with a self-drilling anchor bolt of West et al. or a drill bit of Mulroy et al. is not established nor is there any plausible motivation presented as to why the hypothetical person of ordinary skill would consider a transfer of teachings in the manner purported to be obvious in this Office Action.

Respectfully submitted,
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